

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

MELISA ANN BERGSTEDT,

Defendant.

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CR. 09-40104

REPORT AND RECOMMENDATION  
ON DEFENDANT'S CHANGE  
OF PLEA

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This matter came before the court for a change of plea hearing on Tuesday, December 1, 2009. The Defendant, Melisa Ann Bergstedt, appeared in person and by her counsel, Assistant Federal Public Defender Bill Delaney, while the United States appeared by its Assistant United States Attorney, Jeff Clapper.

The defendant consented in open court to the change of plea before a United States magistrate judge. This court finds that the defendant's consent was voluntary and upon the advice of counsel. The government also consented to the plea hearing before a magistrate judge.

Defendant has reached a plea agreement wherein she intends to plead guilty to Counts 1 and 2 the Indictment which charge her with Mail Fraud in violation of 18 U.S.C. § 1341. At the hearing, the defendant was advised of the nature of the charges to which the defendant would plead guilty and the maximum penalties applicable, specifically: (*each count*) 20 years imprisonment; a \$250,000 fine; or both; 3 years supervised release; 2 additional years imprisonment if supervised release is revoked; a \$100 special assessment, and restitution.

Upon questioning the defendant personally in open court, it is the finding of the court that the defendant is fully competent and capable of entering an informed plea, that the defendant is aware of the nature of the charges and the consequences of the plea, and that her plea of guilty to Counts 1 and 2 of the Indictment is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense. The defendant's guilty plea to Counts 1 and 2 of the Indictment is accepted. It is my report and recommendation that the defendant be adjudged guilty of that offense.

Further, upon imposition of sentence the government will move to dismiss Counts 3 and 4 of the Indictment.

#### **NOTICE TO PARTIES**

The parties have fourteen (14) days after service of this Report and Recommendation to file written objections pursuant to 28 U.S.C. § 636(b)(1), unless an extension of time for good cause is obtained. Failure to file timely objections will result in the waiver of the right to appeal questions of fact. Objections must be timely and specific in order to require de novo review by the District Court. Thompson v. Nix, 897 F.2d 356 (8<sup>th</sup> Cir. 1990); Nash v. Black, 781 F.2d 665 (8<sup>th</sup> Cir. 1986).

Dated this 1<sup>st</sup> day of December, 2009.

BY THE COURT:

s/John E. Simko

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John E. Simko  
United States Magistrate Judge